

1 increases," and it gets the attention of someone who  
2 has practiced ergonomics and someone who has kind of  
3 honed their ergonomics eye.

4 Q. Now how does that specific sentence in your  
5 report relate to the facts of this case as you  
6 understand them? Is there something you're implying  
7 there? I'm just trying to understand why that  
8 sentence sticks out to you in regard to the facts of  
9 this case.

10 A. In regards to the facts of this case, I saw  
11 many examples of where ergonomics was communicated and  
12 implored to workers and that it would assist the  
13 company if more than just safety folks or managers  
14 took on the responsibility of being an everyday safety  
15 inspector, which would include ergonomics; that, in  
16 fact, the individual workers who are given ergonomics  
17 awareness training either in person or in toolbox  
18 talks or tailgate safety meetings, that individual can  
19 improve their ergo eye, keep an eye for hazards, point  
20 them out, and ask for interventions or assessments and  
21 mitigations because of risks they would encounter.

22 When I looked at the evidence of this case,  
23 that jumped out at me, that there were well-designed  
24 flow racks and shelving that were being used counter  
25 to their ergonomic design and counter to the

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1 principles that East Penn espoused in their safety  
2 memos and safety training when it comes to ergonomics  
3 and utilizing the employee as an additional set of  
4 eyes out there looking for hazards and correcting them  
5 if they can or reporting them if they can't.

6 Q. To be clear, sir, though, you have not seen  
7 all of the evidence in this case, have you?

8 A. It's hard for me to know.

9 Q. Okay. Let me just drop down a little bit in  
10 your report. I'm now going to page 4 where it says,  
11 "Assumptions." Do you see that?

12 A. Yes.

13 Q. That page "Assumptions" and then on to page  
14 5 -- pages 4 and 5 of your report, are those all of  
15 the assumptions that formed the basis for your  
16 opinions reached in this case?

17 A. Restate that, please.

18 Q. Are all of the assumptions listed on pages 4  
19 and 5 of your report the assumptions you used in  
20 reaching the opinions that you set out in this report?  
21 I want to understand the basis -- the factual basis of  
22 the opinions that you've laid out in your report here.

23 A. I believe that those assumptions that you're  
24 scrolling past---

25 Q. Yes. And feel free to tell me to go back,

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1 up, down, whatever you'd like.

2 A. That's okay. I also have a paper copy of the  
3 November report. Those assumptions listed include  
4 "Plaintiff alleges the following." So those would not  
5 be all of the assumptions. Those would be the  
6 assumptions elaborated as what the Plaintiff alleges  
7 in the evidence provided to me.

8 Q. Okay. Let me just try to make sure that I  
9 understand exactly what factual basis -- because an  
10 opinion, I think you would agree, is only as good as  
11 the facts that it's based upon. Would you agree to  
12 that general principle?

13 A. Generally, yes.

14 Q. So if you don't have the full facts or you  
15 have incorrect facts, that's going to influence the  
16 opinions that you're giving in any particular  
17 situation; is that fair to say?

18 A. I think so, yes.

19 Q. So if some of the facts that are listed in  
20 the "Assumptions" section of your report are  
21 inaccurate or are different than what is set forth  
22 there, that could potentially impact your opinion; is  
23 that fair to say?

24 A. Say that one, one more time, please.

25 Q. Sure. If the true facts of the case or there

1 are additional facts that are not listed in your  
2 assumptions and you didn't take them into account,  
3 that could impact the opinions you reached in regard  
4 to this matter; is that fair to say?

5 A. I might agree with the first part of that,  
6 but not the part about assumptions and things that I  
7 considered. This list of assumptions does not list  
8 everything. It's not---

9 Q. Then, I'd like to know what else you  
10 considered besides these assumptions, other than just  
11 simple, you know, general things that you are  
12 propounded to be an expert upon, matters of  
13 ergonomics, good practices, and things of that nature.  
14 But the underlying facts, I would like -- I want to  
15 understand all of the underlying facts that you relied  
16 upon in forming the opinions in this case. Do you  
17 understand the question I'm asking?

18 A. Right. So if you're saying excluding my  
19 professional experience, education, and so on---

20 Q. That's correct.

21 A. ---then I believe I would agree with you that  
22 the assumptions -- those are the assumptions.

23 Q. Got you. And so my next point was that if  
24 some of the assumptions that you have recognized in  
25 your report and used as the basis for the formation of

1 your opinions, if those assumptions are different or  
2 contrary to some of the facts that you've relied upon  
3 in forming your opinions, would it be fair to say that  
4 could affect the opinions that you ultimately reach  
5 with regard to this case?

6 A. Yes.

7 Q. Okay. So that's that section. Was there  
8 anything--- I just want to jump back because I want  
9 to understand kind of the overall substance of your  
10 report.

11 Was there anything else that was sticking out  
12 to you in the "Ergonomics and the Ergonomics Process"  
13 section of your report beginning on page 2 that  
14 relates directly to this case? I'm sorry.

15 THE WITNESS: I have a dry mouth and  
16 need to use the restroom, so I would like to  
17 request we take a break.

18 MR. FINAN: Yeah. Can you just answer  
19 that one question, and then I'm happy to do  
20 that for you.

21 A. I would need to very quickly look at my  
22 "Ergonomics and the Ergonomics Process" and tell you  
23 if there were things in here that jumped out at me. I  
24 don't have them top of mind at this point.

25 Q. Got you. I guess my more general question

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1                   Eastern?

2                   MR. FINAN: That's fine.

3                   THE WITNESS: Thank you.

4                   **(A brief recess was taken from 1:56 p.m.**  
5                   **to 2:06 p.m.)**

6                   MR. FINAN: All right. We're back on  
7                   the record.

8                   Q. (By Mr. Finan) Mr. Gondzur, I'm going to  
9                   share my screen again here. Are you able to see my  
10                  screen now?

11                  A. Yes.

12                  Q. Okay. And what I've done is, I've gone to  
13                  the sixth page of your 14-page report. Do you see  
14                  that?

15                  A. Yes.

16                  Q. And there's a section that's entitled,  
17                  "Professional Opinions and Basis for these Opinions."  
18                  Do you see that?

19                  A. Yes.

20                  Q. It reads, "In my professional opinion, the  
21                  subject workplace, and work therein, were unsafe and  
22                  unreasonably dangerous as designed for one or more of  
23                  the following reasons." I want to understand all of  
24                  the opinions that you hold in this case.

25                  Is your opinion in this case stated in the

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1 highlighted text?

2 A. Yes.

3 Q. Okay. Are there any other opinions besides  
4 the highlighted section that I just read into the  
5 record that would dictate any other opinions that you  
6 hold in regard to this case?

7 A. No.

8 Q. Okay. So that is the singular opinion that  
9 you have reached in regard to this case, is that  
10 correct?

11 A. Yes.

12 Q. Okay. When you reference "the subject  
13 workplace," where are you referring to?

14 A. The sites including the home base and the  
15 field locations, customer sites, the vehicle itself  
16 that the route driver would drive, anything that would  
17 be considered a workplace in the course and scope of  
18 Mr. Dorvit's work -- the Plaintiff's work.

19 Q. So you considered every one of his over 200  
20 customers as part of your report; is that what you're  
21 saying?

22 A. I'm saying a sampling of them.

23 Q. Okay. Did you consider the Atlantic Coast  
24 ToyotaLift site? Do you know what I mean what I say  
25 that?

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1           A. Yes, sir.

2           Q. Okay. Are there any other sites that you  
3 specifically considered in reaching your opinion in  
4 this case?

5           A. There are additional sites, a UPS site.

6           Q. The way I understand your report, your  
7 opinion is what we've just read into the record, and  
8 it's -- the reasons that support it are listed here in  
9 numbers 1, 2, 3, 3.1, 3.2, 4, 5, and 6, correct?

10          A. Yes.

11          Q. Do those six bullet points and two sub-bullet  
12 points represent the full basis for the opinions that  
13 you've reached in this case set out in your report?

14          A. Yes.

15          Q. Are there any of the items that are listed in  
16 1 through 6, inclusive, that reference any particular  
17 task performed by Mr. Dorvit at the UPS site?

18          A. That list--- I'm sorry. Would you rephrase  
19 that?

20          Q. Sure. In those numbers 1 through 6,  
21 inclusive, are there any of the items that are listed  
22 there that would reference your evaluation of a  
23 particular condition that would have existed at the  
24 UPS site?

25          A. Do you mean exclusively and only at the UPS

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1 site---

2 Q. Yes, exclusively that relate specifically to  
3 the UPS site.

4 A. No.

5 Q. Are there any that are listed that relate  
6 specifically to the Atlantic Coast ToyotaLift site?

7 A. I think I'm confused by your questioning.

8 Q. Sure. I'm just trying to figure out --  
9 because they're all very general statements other than  
10 what appears under numbers -- item numbers 3, 3.1, and  
11 3.2. Do you see those items there?

12 A. Uh-huh.

13 Q. And with regard to the condition that you  
14 found to be, quote, "unsafe and unreasonably  
15 dangerous," I'm trying to understand exactly what  
16 facility you are pointing to as the basis for your  
17 opinion.

18 And the only one I see here that's listed  
19 appears to match up with the shelving unit at Atlantic  
20 Coast ToyotaLift; is that fair to say?

21 A. Yes, that's fair to say.

22 Q. Okay. So you didn't specifically include or  
23 review any of the other details of any other site  
24 besides Atlantic Coast ToyotaLift in forming your  
25 opinion that there was an unsafe and unreasonably

1 dangerous condition, is that correct?

2 A. Not in this report, that's correct.

3 Q. Okay. And then in terms of -- I'm going to  
4 just run through the whole thing. You've listed  
5 information considered in formulating the above --  
6 this opinion.

7 Is that a complete listing of the items and  
8 documents that you considered in formulating your  
9 opinions?

10 A. Yes.

11 Q. Did you prepare this report yourself or did  
12 somebody prepare it for you on your behalf?

13 A. I prepared it myself.

14 Q. Have you prepared any other expert reports  
15 prior to this one in your service as an expert  
16 witness?

17 A. Yes, I have.

18 Q. Okay. And, then, you are being paid for your  
19 services, correct?

20 A. Yes.

21 Q. And is the rate of 150 per hour an accurate  
22 identification of your compensation per hour in this  
23 matter?

24 A. For the file review component, yes, not for  
25 the deposition.

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1           Q.    Okay.  And have you been asked to perform  
2 additional services beyond the initial file review  
3 that would result in you charging more than \$3000 for  
4 your testimony in this case?

5           A.    I would have to look at my billable hours  
6 spreadsheet to answer that.

7           Q.    Okay.  I want to go back up---

8           A.    I can tell you that \$3000 was -- that number  
9 is the retainer.  That wasn't a line item invoice type  
10 of approach.

11          Q.    Got you.  And have you expended the full  
12 amount of that retainer as of today?

13          A.    Again, I would have to look at my spreadsheet  
14 to know that.

15          Q.    Sure.  I'm going back to the first page of  
16 your report, and I want to -- we've now narrowed down  
17 that you have one opinion in this case, that the work  
18 site was purportedly unsafe and unreasonably dangerous  
19 and that your analysis of the basis for that focused  
20 on Atlantic Coast ToyotaLift's location.

21           I want to get back to this sentence again  
22 here.  Are you also aware that Mr. Dorvit ultimately  
23 refused to perform a task that led to his termination?

24          A.    Yes.

25          Q.    Do you know what the specific task was that

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1           Mr. Dorvit was asked to perform that he refused to do?

2           A. It involved the delivery of batteries at the  
3 facility.

4           Q. The Atlantic Coast ToyotaLift facility?

5           A. Yes.

6           Q. Sorry. Was that a yes? It kind of cut out.

7           A. Yes, sir.

8           Q. Okay. And so it's your understanding that he  
9 was terminated as a result of his refusal to rack  
10 batteries on the shelves at Atlantic Coast ToyotaLift;  
11 is that fair to say?

12          A. If I recall correctly reading the documentary  
13 evidence and previous depositions, there may have been  
14 extenuating circumstances beyond just that, but I  
15 believe that the major focus was his refusal to  
16 perform that work task that he believed was unsafe.

17          Q. Okay. In your analysis of the situation that  
18 led you to form the opinion that you hold and have  
19 expressed in this report, do you know the specifics of  
20 the circumstances that relate to which shelf  
21 Mr. Dorvit refused to rack batteries on?

22          A. I understand it was the second from the  
23 bottom.

24          Q. Okay. Now where in your assumptions is that  
25 recited? Because in looking through your statement of

1 assumptions--- Do you see where I've highlighted on  
2 page 4?

3 A. Yes.

4 Q. Okay. Is there something else in the report  
5 that would indicate that you analyzed and that your  
6 opinion is based upon his refusal to rack batteries on  
7 the second shelf up from the floor rather than the  
8 bottom shelf just above floor level?

9 A. I don't believe there's anything else in my  
10 report that references that.

11 Q. Okay. And, again, going to the basis for  
12 your opinion, do items number 3.1 and 3.2 only relate  
13 to Mr. Dorvit's purportedly having to place batteries  
14 on the very bottommost shelf?

15 A. They are focused on the bottommost shelf;  
16 this is true.

17 Q. And it says right here, "Loading a rack at  
18 floor level"?

19 A. Yes.

20 Q. It's fair to state, then, that in numbers 3,  
21 3.1, and 3.2, those bases for your opinion focus  
22 exclusively on the rack at the floor level, correct?

23 A. I'm sorry. Say that one more time.

24 Q. Sure. It's fair to say, then, that the --  
25 what you list in numbers 3, 3.1, and 3.2 are focused

1 exclusively -- this is on page 6 of your report -- are  
2 focused exclusively on the racking of batteries at the  
3 very bottom level of the shelving system; is that fair  
4 to say?

5 A. I don't know if I'd use the word  
6 "exclusively," but certainly, the emphasis there was  
7 on that---

8 Q. Well, it states right here -- it says,  
9 "Loading a rack at floor level from the front with  
10 heavy batteries significantly increases the risk of  
11 musculoskeletal disorder due to a combining of risk  
12 factors as described below"?

13 A. Sure.

14 Q. Is there any discussion of the second shelf  
15 at all in that paragraph 3?

16 A. There is not.

17 Q. In numbers 1 through 6, is there any  
18 discussion of the second shelf at all anywhere?

19 A. No.

20 Q. Okay. So is it fair to say that in reaching  
21 the opinion that you reached in this case that there  
22 was an unsafe and unreasonably dangerous condition,  
23 you focused exclusively on the shelf at the floor  
24 level, correct?

25 A. What was the beginning of that sentence? Is

1 there any what?

2 Q. In reaching the opinion that you've reached  
3 that there was an unsafe and unreasonably dangerous  
4 workplace condition, you focused your analysis only on  
5 the racking at the very floor level at Atlantic Coast  
6 ToyotaLift, correct?

7 A. No. I was looking at evidence regarding the  
8 entire rack and the practice of being asked to load a  
9 first in, first out rack from the front. It wasn't  
10 just the bottom shelf. It's just that the bottom  
11 shelf was called out specifically in the assumptions  
12 and then called out in this report, but the items 1  
13 and 2, for instance, are not exclusively to the bottom  
14 shelf.

15 Q. Okay. Do they state anything at all about  
16 the bottom shelf? They don't appear to, to me. You  
17 tell me.

18 A. Items 1 and 2, right, they do not -- they do  
19 not call out shelf height.

20 Q. Right. And they seem to me to be more, I  
21 would call them, general statements rather than  
22 statements that are specific to the facts of this  
23 case, correct?

24 A. No, I wouldn't say that. Those facts have to  
25 do with the entire shelving system, and the risk to an

1 individual pushing batteries up a slope is not a risk  
2 I would reconsider at certain heights. We're also  
3 looking at the forces involved as batteries are in  
4 series in a column on a shelf at any height.

5 Q. To be clear, you did not perform any personal  
6 analysis or calculation of any kind with respect to  
7 any force that would be required to move any of the  
8 batteries on either the bottommost shelf or the second  
9 shelf up from the floor in this case, did you?

10 A. That's correct.

11 Q. You have not performed any such calculation  
12 at all, have you?

13 A. No quantitative analysis has been performed  
14 by me.

15 Q. Okay. And you didn't personally visit and  
16 inspect the location to reach the conclusions that  
17 you've reached and the opinion that you've included in  
18 your report in this case, did you? I'm sorry?

19 A. Would you say that one more time, please.

20 Q. You didn't personally visit and inspect the  
21 location in connection with your reaching the  
22 conclusions and providing the opinion that you've  
23 provided in this case, did you?

24 A. I did not personally inspect the site. I  
25 formed my opinion based on looking at the documentary

1 evidence, the photos because this was, in my opinion,  
2 an obvious set of circumstances, that the hazards were  
3 obvious and could be such that a quantitative analysis  
4 could be replaced with a qualitative one, where you're  
5 not looking at degrees of hazard but rather hazard in  
6 a greater -- more big picture concept.

7 Q. Okay. So in terms of the second shelf again,  
8 I want to understand exactly what portions of these  
9 items numbered 1 through 6 on your report relate in  
10 any way to your opinion with respect to the placement  
11 and loading of batteries on the second shelf of the  
12 rack.

13 Again, I think we've established that 3 and  
14 its subparts relate only to the floor-level rack,  
15 correct?

16 MR. VAN KAMPEN: Objection.

17 Mischaracterizes his testimony.

18 Q. You can answer.

19 THE WITNESS: I answer?

20 MR. VAN KAMPEN: Yeah. I objected and  
21 said it mischaracterizes the testimony. You  
22 can answer.

23 A. I would not say point 3 is exclusive,  
24 although it mentions the rack at floor level. The  
25 forceful exertions of pushing and pulling batteries

1 exist at any level on a racking system like this, and  
2 certainly points 1, 2, 4, 5, and 6 are in relation to  
3 the entire shelving system, each rack level.

4 Q. Again, tell me -- I think 3, as I'm reading  
5 it, relates specifically to the floor-level rack. It  
6 says, "Loading a rack at floor level," at the very  
7 beginning and then describes under 3.1 and 3.2 the  
8 things that relate to that rack.

9 Tell me where in points 1, 2, 4, 5, or 6  
10 there is anything that relates to the middle -- second  
11 shelf rack?

12 A. Points 1, 2, 4, 5, and 6 imply the entire  
13 racking system. They don't call out a specific rack.

14 Q. Okay. You make a statement here, "Several  
15 weeks after Mr. Dorvit's termination---" This is  
16 under point 5. ---"ACTL relocated the rack away from  
17 the back wall allowing to safely load from the rear,  
18 including ACTL likely recognized the hazard of its  
19 original position."

20 You don't have any basis to make that  
21 statement, do you, in terms of your own knowledge why  
22 Atlantic Coast moved the shelf or if it even did?

23 A. My basis would be my professional experience  
24 in servicing and interacting with employers, observing  
25 safe behaviors and unsafe behaviors, and the

1 consequences of highlighting hazards and mitigating  
2 them. Oftentimes after an accident, you'll see a  
3 reaction where adjustments are made.

4 You might even see a reaction when an  
5 employer has a supervisor walk into an area. People  
6 begin to put on their safety glasses. We call that an  
7 adjustment because they know the right thing to do,  
8 the safe thing to do, and they may not always do it  
9 when no one's looking, but when an event occurs,  
10 sometimes you'll see that adjustment activity  
11 occurring.

12 I would say that I perceive this declaration  
13 of them relocating as an adjustment-type behavior,  
14 recognizing that it was an unnecessarily hazardous  
15 position for a FIFO rack to have it against a wall  
16 when it needs to be loaded from the rear. They  
17 recognized that and they likely took action based on  
18 that recognition of this hazard.

19 Q. And just to be clear, sir, that's pure  
20 conjecture on your part. You have no basis in fact  
21 for knowing why Atlantic Coast actually moved the rack  
22 from its original position, do you?

23 A. That's correct.

24 Q. How does risk--- Strike that.

25 How does any history of safety or injury---

1           Q. Okay. How do those -- again, going back to  
2 my actual question, with respect to 3.2 -- and I'll  
3 just read it, "Forceful exertions of pushing a series  
4 of two or more batteries weighing from 30 to 50  
5 pounds, up an approximate 15 to 20 degree slope,  
6 against the force of gravity, with shoulder exertion  
7 while in an extremely awkward posture kneeling on a  
8 hard surface while experiencing contact pressure or  
9 contact stress from the floor, shelf, and shelf edge."

10           Tell me what you're -- what are you saying  
11 there? I want to understand that paragraph.

12           A. Sure. Okay. That's shoulder extension, not  
13 shoulder exertion, by the way.

14           Q. I'm sorry.

15           A. That's okay. So what I'm saying there is  
16 that, as I stated, when analyzing a job with ergonomic  
17 risk factors, when we measure the hazard and  
18 approximate the risk, there are a number of inputs  
19 that can affect the output, outcome, and the risk.

20           So you've got force, you've got additions to  
21 force because of slope and gravity and the inherent  
22 friction, and then we have the awkward posture of the  
23 reach required, the extension of the shoulder. If you  
24 couple those with the risk factor of kneeling on a  
25 hard surface, the contact pressure or stress from that

1 kneeling as well as the contact pressure or stress  
2 from the shelf and the shelf edge, that combination  
3 typically results in higher hazard and higher risk.

4 Q. That's what you're saying in 3.2?

5 A. Yes.

6 Q. Okay. And was an assumption that you've made  
7 in reaching that basis for your opinion under 3.2 that  
8 the slope of the shelving was at a 15 to 20 degree  
9 angle?

10 A. Yes.

11 Q. How does that impact your analysis?

12 A. It adds an additional factor to any proposed  
13 future calculation of force and hazard.

14 Q. Just to be clear, that's not a calculation  
15 you've ever performed, correct?

16 A. Not at this ACTL site.

17 Q. Okay. That's correct. You've performed them  
18 in the past, but you've not performed them with regard  
19 to this case, correct?

20 A. That's correct.

21 Q. Okay. How would your opinion differ if it  
22 were the case that the slope were actually far less  
23 than 15 to 20 degrees?

24 A. Are you saying quantify that?

25 Q. You've not done any quantitative analysis,

1 and you've, I think, used the term that all of this  
2 was based upon qualitative analysis and some  
3 assumptions that you made. One of those assumptions  
4 appears to be that you're dealing with a 15 to 20  
5 degree slope.

6 If that slope were less than that by a  
7 significant amount, how would that change your  
8 conclusions?

9 A. It would depend on how much different it is,  
10 you know, how much less than that assumed or presumed  
11 15 to 20 degrees.

12 Q. How much less would be relevant in your mind?

13 A. Probably 50 to 60 or so percent less would  
14 have an impact. It wouldn't change the hazard  
15 completely, but it would probably lessen the hazard.  
16 It's hard to know without, you know, doing a  
17 quantitative analysis.

18 Q. And, again, you're right. It is difficult  
19 and you did not perform one here, so I'm just trying  
20 to understand the basis and the reasons why you  
21 reached the conclusions that you did reach. And if  
22 there's assumptions that you've made that were  
23 different than what is actually out there in the  
24 field, I'm trying to learn and understand how those  
25 might impact your opinions. Do you see what I'm

1 || getting at there?

**2** A. Right.

3 Q. Okay. Let me show you a picture. This is  
4 going to be Exhibit 82, and this has been produced  
5 today. This was a picture that was taken from the  
6 site of the actual slope of the shelf. It's not a  
7 precision instrument, but this is an iPhone on the  
8 shelf itself indicating that it's a five percent slope  
9 rather than a 15 to 20 percent slope. Do you see what  
10 I'm showing you there?

19 So we're not conceding or stipulating  
20 that this is the same shelf or that the shelf  
21 wasn't manipulated or changed in the interim  
22 period.

23 MR. FINAN: And that's fine and feel  
24 free to place your objection on the record,  
25 and I'll just point you to the testimony of

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1                   Atlantic Coast that says this is the exact  
2                   same shelf, configured in the exact same way  
3                   that it was at the time in question. It is  
4                   just at a different location.

5                   Q. So with that on the record, Mr. Gondzur, it  
6                   appears -- I think you said that a 50 to 60 percent  
7                   difference would have an impact on your opinion. This  
8                   is somewhere between a 75 percent difference at its  
9                   highest from the assumption at 20 percent that you  
10                  made in reaching the opinions that you did.

11                  So how would -- if the shelving slope were  
12                  actually only five percent, how would that change your  
13                  opinions in this case?

14                  A. What it would do, if it were true, it would  
15                  lessen the slope component, but it wouldn't have any  
16                  impact on the friction component. What we don't know  
17                  from pure slope is a measurement of the -- like the  
18                  coefficient of drag. So slope is one component, but  
19                  it doesn't tell the whole story.

20                  Even if that said, you know, a 30-degree  
21                  slope or a zero-degree slope, that's one component.  
22                  What we're after is what's the force requirement, and  
23                  that's the component we don't have.

24                  Q. Okay. But, again, you've reached an opinion  
25                  in this case that the task was unsafe and unreasonably

1 dangerous and you based it, at least in part, upon a  
2 shelf that we would contend is actually five degrees  
3 in slope versus your report which says 15 to 20  
4 degrees in slope.

5 You also indicate friction is a  
6 consideration, is that correct?

7 A. Right. As a complement to gravity, we see  
8 that friction has play in terms of force requirements  
9 when pushing and pulling objects.

10 Q. Okay. So, obviously, the more force that is  
11 required to move an object, the more potentially  
12 unsafe or dangerous it could be; is that a fair  
13 statement of a general proposition?

14 A. Yes.

15 Q. Okay. So if something is relatively easy to  
16 move, does that indicate a condition where there is  
17 less danger present?

18 A. It might.

19 Q. Okay. I'm going to show you a video--- I'm  
20 going to show you a video of batteries being moved on  
21 the rack and then ask to get your reaction to it.

22 (Video played.)

23 MR. VAN KAMPEN: Chris, are you playing  
24 this at a slow speed?

25 MR. FINAN: No.

1                   MR. VAN KAMPEN: Because it's -- yeah,  
2                   it's just looking slow to me. Okay.

3                   MR. FINAN: I'll play it again. It  
4                   might just be an Internet connection lag or  
5                   something like that.

6                   MR. VAN KAMPEN: Uh-huh.

7                   MR. FINAN: Let me play it again.

8                   **(Video played.)**

9                   MR. VAN KAMPEN: Let me just get an  
10                  objection on the record. First, can you,  
11                  Chris, just identify for the witness whose  
12                  voice it is representing that this is the  
13                  same rack? Is that an East Penn employee?

14                  MR. FINAN: No. That is the owner of  
15                  Atlantic Coast ToyotaLift.

16                  MR. VAN KAMPEN: All right.

17                  MR. FINAN: He was the deponent in the  
18                  case.

19                  MR. VAN KAMPEN: Let me just state --  
20                  object for the record that the batteries in  
21                  question are Interstate batteries that are  
22                  being moved, and we further object to the  
23                  fact that we don't know the chain of custody  
24                  around those batteries, whether or not those  
25                  batteries have their cores in them, how much

1 materials. At the time of writing this report, I had  
2 no similar documentary evidence about the particular  
3 shelf in question or the racking system in question.  
4 But with an average slope of 15 degrees, I believe  
5 what they are implying here is that slopes can be  
6 sold -- or shelving units can be sold with different  
7 slopes.

8 Q. Understood. And what we've shown you here,  
9 though -- unless you have any evidence or reason to  
10 contest it -- is that the slope of this particular  
11 rack was five degrees, correct?

12 A. I do not know the slope of the rack in  
13 question.

14 Q. Okay. What I stated and showed you was a  
15 picture of a five-degree measurement taken at the date  
16 of the inspection, do you any reason to believe that  
17 that's inaccurate based on what you've seen?

18 A. I have reason to believe that it's not  
19 reliable based on the fact that it was an image on a  
20 smart phone, not any evidence of a NIST traceable  
21 scientific instrument.

22 Q. That wasn't my question. My question was,  
23 you don't have any evidence to indicate that the  
24 actual slope was 15 or five, do you?

25 A. That's correct.

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1 Q. Okay. But in considering and in forming your  
2 opinion, you considered a shelving system that had a  
3 15-degree average slope -- 15 to 20, I think, was your  
4 terminology, correct?

**5**                   A.     Approximately.

6 Q. Okay. In returning to the -- I want to play  
7 the video again once more.

8 (Video played.)

9 Q. I want to stop the video there. Friction was  
10 another component that you indicated previously was an  
11 important factor in determining the force required to  
12 perform a particular task, is that correct?

**13** A. Yes.

14 Q. In this case, does it make a difference in  
15 your analysis that when the battery's moved -- and  
16 assuming they've not been manipulated in any way --  
17 that they stay in place on the shelves and do not  
18 slide back forward towards the front of the shelving  
19 unit, despite the slope of the racking system? Does  
20 that play into your analysis at all?

21 MR. VAN KAMPEN: Objection. I just want  
22 to state for the record you mentioned  
23 friction from the surface, and once again, we  
24 don't know whether or not that's the actual  
25 surface, whether that surface was manipulated

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1                   with some sort of lubricant to make these  
2                   batteries move more easily.

3                   With that, you can answer the question,  
4                   if you know.

5                   A. Yeah. I would ask you to restate that,  
6                   please.

7                   Q. Sure. And I think with respect to the  
8                   objection, just for the record, I think it might make  
9                   it harder.

10                  Is your understanding that if these batteries  
11                  are required to be manipulated around on the shelves,  
12                  the fact that they stay put and don't slide forward to  
13                  the front -- is that a good thing or a bad thing?

14                  A. The fact that they stay put and don't slide  
15                  to the front, is that a good thing or a bad thing?  
16                  With a rack designed for very heavy items, the slope  
17                  involved is typically one that lessens the force  
18                  requirement, although it typically is not a sufficient  
19                  slope that would allow things to move on their own  
20                  without you inputting some pressure, if you understand  
21                  what I mean.

22                  Q. I think I do.

23                  A. This type of a slope -- it assists the worker  
24                  in manipulating things, but it's not exactly like the  
25                  slope you might see in, say, a grocery store where you

1 take one item and everything comes sliding down right  
2 behind it before you can even get your item off the  
3 shelf.

4 Q. The soup can dispenser?

5 A. Right. This design typically is -- the slope  
6 is a little more gradual, and in fact, it's really  
7 more about helping the delivery person than it is the  
8 customer who might be removing the battery from the  
9 rack.

10 Q. Now when you---

11 A. I'm sorry. I'm lost in my -- in answering  
12 your question, I lost myself in remembering exactly  
13 what your question was.

14 Q. That's okay. I understand. What I'm trying  
15 to understand is, if you're not able to load this  
16 rack, for whatever reason, from the rear -- and, you  
17 know, obviously, we don't concede that it's supposed  
18 to be loaded from the rear.

19 But if it were and the batteries, rather than  
20 you having to hold them up in place -- like the soup  
21 can dispenser, you'd have to hold everything in place  
22 to put the one in the front because they'd all come  
23 sliding down at you if you didn't -- is it a benefit  
24 to the person who's racking the batteries on the  
25 shelf, assuming there's enough room around them to

1 manipulate them, that the batteries stay put on the  
2 shelves by themselves and don't come sliding back to  
3 the front while trying to load the batteries on the  
4 shelf?

5 A. Yes.

6 Q. That would reduce the risk of the unsafe  
7 condition, then, correct?

8 A. You'd have to be more specific when you say  
9 "that would reduce the risk." The risk to whom and  
10 from what?

11 Q. Well, I mean, again, I'm focused on your  
12 opinions in the case, and your opinion is that this  
13 racking system is unsafe and -- unsafe and  
14 unreasonably dangerous.

15 A. Uh-huh.

16 Q. And so the fact that the batteries do not  
17 move around on the shelf on their own makes the  
18 condition less unsafe and less unreasonably dangerous;  
19 is that fair to say?

20 A. I don't know.

21 Q. Okay. It's hard to determine without  
22 performing a full quantitative analysis, correct?

23 A. It's hard to determine the push-pull  
24 component. However, if you would note, in my report  
25 on page 4, again, I believe -- no, not 4 -- page 6,

1           we're also talking about pulling batteries, and that  
2           pulling of batteries to exchange batteries, to remove  
3           junk, or to add new batteries, that has a lifting  
4           component to it, and the slope of the shelf has no  
5           impact on the lifting component. The lip on the rack  
6           would have an impact, and there would be no such lip  
7           on the rear of the rack.

8           Q.     But you would, on the rear of the rack, have  
9           a longer distance to lift, would you not?

10          A.     A longer distance to lift?

11          Q.     You have to lift it higher up?

12          A.     Right. So that would be an additional---

13          Q.     That would be additional force required to  
14           lift the battery higher, correct?

15          A.     Presumably there would be a slightly higher  
16           force.

17          Q.     I want to just show you -- this is  
18           Plaintiff's Exhibit -- well, it's Exhibit 75. You can  
19           see from these photographs, this is sort of the back.  
20           Do you see that photo? This is Plaintiff's -- I think  
21           it's 542 Bates-numbered, and you see this is the back  
22           of that bottom shelf, just for an example?

23          A.     Uh-huh.

24          Q.     It's about -- it's hard to tell because it's  
25           at a little bit of an angle, but somewhere between